

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAIKOLOA DEVELOPMENT CO., )	)	CIV. NO. 13-00402 DKW-BMK
	)	
Plaintiff,	)	
	)	
vs.	)	FINDINGS AND
	)	RECOMMENDATION TO DENY
	)	PLAINTIFF'S MOTION FOR
HILTON RESORTS CORP., ET AL., )	)	ATTORNEYS' FEES AND COSTS
	)	AS PREMATURE
Defendant.	)	
	)	

**FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES AND COSTS AS PREMATURE**

Before the Court is Plaintiff Waikoloa Development Co.'s Motion for Attorneys' Fees and Costs Against Defendants (Doc. 33). After careful consideration of the Motion and the supporting and opposing papers, the Court finds and recommends that it be DENIED without prejudice as premature.<sup>1</sup>

Although issues in this case are still pending, Plaintiff moves for an award of attorneys' fees and costs from Defendants Hilton Resorts Corp., Hilton Kingsland 1, LLC, and Hilton Kingsland 2, LLC (collectively, "Defendants"). Plaintiff argues that it is entitled to fees and costs because it prevailed on two of its claims (Count III for breach of deed and Count IV for breach of Subdivision

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<sup>1</sup> The Court elects to decide this Motion without a hearing, pursuant to Local Rule 7.2(d).

Improvement Agreement). However, other claims are still pending before the Court and Judgment has not been entered.

In this district, “unless otherwise . . . ordered by the court, a motion for an award of attorneys’ fees and related non-taxable expenses must be filed and served within fourteen (14) days of entry of judgment.” LR 54.3. Although the Order on Summary Judgment directed Plaintiff to “file a motion pursuant to Local Rule 54.3,” Plaintiff must wait for Judgment to be entered before filing such a motion. (Doc. 32 at 10 n.1.) This Court has previously concluded that, “where a plaintiff’s claims remain undecided and judgment had not been entered, a motion for attorneys’ fees is premature.” Gemini Ins. v. Kukui`ula Dev. Co. (Hawaii), LLC, Civ. NO. 10-00637 LEK-BMK, 2013 WL 1103338, at \*1 (Feb. 28, 2013).

The Court finds that Plaintiff’s request for fees and costs is premature. Claims are still pending before the Court and Judgment has not been entered. Moreover, counsel continue to incur fees in this case. While the motion for fees has been pending, counsel engaged in motions practice and attended a settlement conference. The Court is scheduled to hold a further settlement conference on October 20, 2014 and a jury trial on remaining issues is set for February 17, 2015. A request for fees and costs will be more appropriate after Judgment is entered and this case is resolved. The Court finds that, while the case is ongoing, Plaintiff’s

Motion for Attorneys' Fees and Costs is premature. See Gemini Ins., 2013 WL 1103338, at \*1. Accordingly, the Court recommends that it be DENIED without prejudice.

Any Objection to this Findings and Recommendation shall be filed in accordance with the Federal Rules of Civil Procedure and this Court's Local Rules.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, August 22, 2014.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

Waikoloa Dev. Co. v. Hilton Resorts Corp., et al., CIV. NO. 13-00402 DKW- BMK; FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS AS PREMATURE.